

STATE OF SOUTH CAROLINA

Michelle and James Smith,

Complainant/Petitioner

v.

South Carolina Electric & Gas Company,

Defendant/Respondent

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET

NUMBER: 2009 - 327 - E

(Please type or print)

Submitted by: K. Chad Burgess

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

☐ Request for item to be placed on Commission's Agenda expeditiously

☐ Other: _____

| INDUSTRY (Check one) | NATURE OF ACTION (Check all that apply) | | | |
|--|--|--|--|--|
| <input checked="" type="checkbox"/> Electric | <input type="checkbox"/> Affidavit | <input checked="" type="checkbox"/> Letter | <input type="checkbox"/> Request | |
| <input type="checkbox"/> Electric/Gas | <input type="checkbox"/> Agreement | <input type="checkbox"/> Memorandum | <input type="checkbox"/> Request for Certification | |
| <input type="checkbox"/> Electric/Telecommunications | <input type="checkbox"/> Answer | <input type="checkbox"/> Motion | <input type="checkbox"/> Request for Investigation | |
| <input type="checkbox"/> Electric/Water | <input type="checkbox"/> Appellate Review | <input type="checkbox"/> Objection | <input type="checkbox"/> Resale Agreement | |
| <input type="checkbox"/> Electric/Water/Telecom. | <input type="checkbox"/> Application | <input type="checkbox"/> Petition | <input type="checkbox"/> Resale Amendment | |
| <input type="checkbox"/> Electric/Water/Sewer | <input type="checkbox"/> Brief | <input type="checkbox"/> Petition for Reconsideration | <input type="checkbox"/> Reservation Letter | |
| <input type="checkbox"/> Gas | <input type="checkbox"/> Certificate | <input type="checkbox"/> Petition for Rulemaking | <input type="checkbox"/> Response | |
| <input type="checkbox"/> Railroad | <input type="checkbox"/> Comments | <input type="checkbox"/> Petition for Rule to Show Cause | <input type="checkbox"/> Response to Discovery | |
| <input type="checkbox"/> Sewer | <input type="checkbox"/> Complaint | <input type="checkbox"/> Petition to Intervene | <input type="checkbox"/> Return to Petition | |
| <input type="checkbox"/> Telecommunications | <input type="checkbox"/> Consent Order | <input type="checkbox"/> Petition to Intervene Out of Time | <input type="checkbox"/> Stipulation | |
| <input type="checkbox"/> Transportation | <input type="checkbox"/> Discovery | <input type="checkbox"/> Prefiled Testimony | <input type="checkbox"/> Subpoena | |
| <input type="checkbox"/> Water | <input type="checkbox"/> Exhibit | <input type="checkbox"/> Promotion | <input type="checkbox"/> Tariff | |
| <input type="checkbox"/> Water/Sewer | <input type="checkbox"/> Expedited Consideration | <input type="checkbox"/> Proposed Order | <input checked="" type="checkbox"/> Other: | |
| <input type="checkbox"/> Administrative Matter | <input type="checkbox"/> Interconnection Agreement | <input type="checkbox"/> Protest | Reply to Response to | |
| <input type="checkbox"/> Other: | <input type="checkbox"/> Interconnection Amendment | <input type="checkbox"/> Publisher's Affidavit | Motion to Dismiss | |
| | <input type="checkbox"/> Late-Filed Exhibit | <input type="checkbox"/> Report | | |



September 28, 2009

VIA ELECTRONIC FILING

The Honorable Charles Terreni
Chief Clerk / Administrator
Public Service Commission of South Carolina
Post Office Box 11649
Columbia, South Carolina 29211

RE: Michelle and James Smith v. South Carolina Electric & Gas Company
Docket No. 2009-327-E

Dear Mr. Terreni:

Please find enclosed for filing on behalf of South Carolina Electric & Gas Company ("SCE&G") its Reply to Michelle and James Smith's Response to SCE&G's Motion to Dismiss in the above captioned matter.

By copy of this letter, we are serving a copy of SCE&G's Reply upon Michelle and James Smith as well as counsel for the South Carolina Office of Regulatory Staff and enclose a certificate of service to that effect.

If you have any questions or concerns, please do not hesitate to contact us.

Very truly yours,

K. Chad Burgess

KCB/mcs

cc: Michelle and James Smith
Shannon Bowyer Hudson, Esquire
(all via electronic mail and First Class US Mail)

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2009-327-E

IN RE:

Michelle and James Smith,

Complainant/Petitioner

v.

South Carolina Electric & Gas Company,

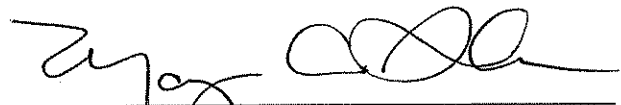
Defendant/Respondent

**CERTIFICATE OF
SERVICE**

This is to certify that I have caused to be served this day one (1) copy of South Carolina Electric & Gas Company's Reply to Michelle and James Smith's Response to SCE&G's Motion to Dismiss via First Class U.S. Mail to the persons named below at the addresses set forth:

Michelle Smith
James Smith
35 Rainbow Road
Beaufort, SC 29910

Shannon Bowyer Hudson, Esquire
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, SC 29201



Mary C. Salane

Columbia, South Carolina
This 28th Day of September, 2009

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2009-327-E

| | | |
|--|---|--|
| IN RE: |) | |
| |) | |
| Michelle and James Smith, |) | |
| |) | |
| Complainants/Petitioners, |) | |
| |) | SOUTH CAROLINA ELECTRIC & GAS |
| v. |) | COMPANY'S REPLY TO SMITHS' |
| |) | RESPONSE TO MOTION TO DISMISS |
| South Carolina Electric & Gas Company, |) | |
| |) | |
| Defendant/Respondent. |) | |
| |) | |

Pursuant to 26 S.C. Code Ann. Regs. 103-829 (1976, as amended) and applicable South Carolina law, Respondent South Carolina Electric & Gas Company ("SCE&G" or "Company") hereby replies to Complainants Michelle and James Smith's (together, the "Smiths") response entitled "Reply To SCE&G's Motion To Dismiss" ("Smith Response") filed in the above-captioned matter.

A. The statutes cited by the Smiths do not establish jurisdiction over matters related to SCE&G's route selection and construction of a 115 kV transmission line.

In the Smith Response, the Smiths claim that the Public Service Commission of South Carolina ("Commission") "does have jurisdiction" over the 2.4 mile long, 115 kilovolt ("kV") transmission line ("Pritchardville 115 kV Line"), which is currently being constructed by SCE&G to reliably serve the load growth in the Towns of Bluffton, Hardeeville and the areas between, including Pritchardville. However, the Commission is "a governmental body of

limited power and jurisdiction, and has only such powers as are conferred upon it either expressly or by reasonably necessary implication by the General Assembly.” City of Camden v. South Carolina Pub. Serv. Comm’n, 283 S.C. 380, 382, 323 S.E.2d 519, 521 (1984). The South Carolina General Assembly has expressly limited the Commission’s jurisdiction concerning the route selection and construction of high voltage transmission lines, and the Smiths fail to identify any legal requirement or otherwise make any allegation that justifies the Commission’s exercise of jurisdiction.

In support of their argument, the Smiths rely upon S.C. Code Ann. § 58-27-40 (Supp. 2008), which states, in pertinent part, that “[e]ach electric utility . . . must obey and comply with all requirements of every order, decision, direction, rule, or regulation made or prescribed by the Public Service Commission of South Carolina” Contrary to the Smiths’ assertion otherwise, § 58-27-40 is not a statute which addresses the jurisdiction of the Commission over the route selection and construction of the Pritchardville 115 kV Line. Section 58-27-40 simply requires electric utilities to obey and comply with all requirements of every order, decision, direction, rule, or regulation of the Commission. In the instant case, there is no “order, decision, direction, rule, or regulation of the Commission” or other law which prohibits SCE&G from constructing the 115 kV Line. In other words, the Smiths have failed to identify any “requirement” that SCE&G allegedly violated. Therefore, the Smiths’ complaint fails because they cannot allege any act or omission by SCE&G “in violation . . . of any law which the commission has jurisdiction to administer or of any order or rule of the commission.” See S.C. Code Ann. § 58-27-1940; see also S.C. Code Ann. Regs. 103-804(C).

The Smiths also argue that pursuant to S.C. Code Ann. § 58-27-140 and § 58-27-150 the Commission has jurisdiction over the route selection and construction of the Pritchardville 115

kV Line. However, these statutory provisions address the Commission's ability to, among other things, make rules and regulations concerning electric utilities. Contrary to the Smiths' belief, neither statute confers jurisdiction upon the Commission concerning the route selection and construction of a 115 kV Line or imposes any substantive requirements on the utilities.

Indeed, it is well settled that South Carolina law does not require SCE&G to obtain Commission approval of its route selection when constructing a transmission line with an operating voltage of less than 125 kV. See S.C. Code Ann. § 58-33-110(1) (requiring Commission approval before commencing construction of a "major utility facility"), and S.C. Code Ann. § 58-33-20(2)(b) (defining "major utility facility" to include only "electric transmission line[s] and associated facilities of a designed operating voltage of one hundred twenty-five kilovolts or more" (emphasis added)). Moreover, consistent with these statutes, the Commission regulations themselves specifically do not require that SCE&G obtain Commission approval of its route selection for and construction of the 115 kV Line. See S.C. Code Ann. Regs. 103-304 (requiring Commission approval only before "the construction and/or operation of any transmission line with a designed voltage of 125 KV or more" and also not requiring a utility to obtain a certificate of public convenience and necessity "for an extension within or to territory already served by it, necessary in the ordinary course of its business.")). In other words, the South Carolina General Assembly, in enacting S.C. Code Ann. § 58-33-20 and § 58-33-110, specifically rejected the idea of the Commission having jurisdiction over the siting of any line under 125 kV. Based upon the foregoing, the Commission should grant SCE&G's motion to dismiss.

B. Statutes addressing local planning commissions do not fall under the Commission's purview.

In the Smith Response, the Smiths also claim that SCE&G failed to comply with S.C. Code Ann. § 6-29-540 (1976, as amended), which is part of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994. Contrary to the Smiths' belief otherwise, Section 6-29-540 is not a Commission regulation or otherwise under the jurisdiction of the Commission. Section 6-29-540 is a statute that addresses matters dealing with local planning commissions and has no bearing whatsoever on the issue pending before the Commission.¹

C. The Smiths misinterpret S.C. Code Ann. § 58-27-1230 (1976, as amended).

The Smiths argue that "SCE&G may not have adhered to SECTION 58-27-1230." As an initial matter, the Smiths did not raise this issue in their complaint and because they failed to do so this argument should be stricken from the Smith Response.

Nevertheless, the statute itself disclaims any applicability in this case, as this section states that it "shall not be construed to require any such electrical utility to secure a certificate ... for an extension ... to territory already served by it, necessary in the ordinary course of its business." See S.C. Code Ann. § 58-27-1230. It is undisputed that the Pritchardville 115 kV Line will run between territories already served by SCE&G, or that the line is necessary. The Smiths only complain about the alleged aesthetic impacts to their view due to the routing of the line. Consequently, the Commission should reject this argument.

¹ The Smiths cannot point to any comprehensive plan or any element of any comprehensive plan that SCE&G somehow failed to comply with. In fact, governments of Beaufort County and the Town of Bluffton, among other local officials, were informed of the route and siting of the Pritchardville 115 kV Line.

D. The Smiths' remaining arguments are nothing more than conclusory statements.

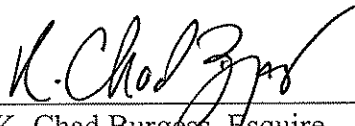
It is self-evident that the Smiths do not approve of SCE&G's route selection and the construction of the Prichardville 115 kV Line. In order to express their displeasure, the Smith Response is replete with statements that are conclusory in nature and amount to nothing more than red-herrings. Moreover, these statements are simply a rehash of the statements already made by the Smiths in their complaint. As the Company stated in its pre-filed direct testimony, which is incorporated herein by reference, SCE&G notified local elected officials of the community workshop and sought their input concerning the proposed routes. In addition, the Company notified local elected officials of the final route selection. Furthermore and as explained in the Company's pre-filed direct testimony, SCE&G did not engage in "bullying tactics" as the alleged by the Smiths. Also, the Company did not choose a "zig-zag" pattern or consider the economic profile of the affected neighborhoods in deciding where to route the Prichardville 115 kV Line. A review of the route map shows the inanity of the zig-zag claim, and the economic make-up of the affected neighborhoods played no role whatsoever in the route selection process for the Prichardville 115 kV Line.²

For the foregoing reasons, SCE&G respectfully requests that the Commission dismiss the Smiths' complaint.

[SIGNATURE PAGE FOLLOWS]

² As discussed in the pre-filed testimony, the line siting was the result of environmental and land use patterns, both present and future.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "K. Chad Burgess", is written over a horizontal line.

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*Attorneys for Defendant/Respondent
South Carolina Electric & Gas Company*

Columbia, South Carolina
September 28, 2009